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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 594

UNION PACIFIC RAILROAD COMPANY, ET AL.,
Appellants,

vs.

UNITED STATES OF AMERICA, ET AL.,
Appellees.

MOTION TO POSTPONE ARGUMENT.

WILLIAM E. KEMP,
HALE HOUTS,
LESLIE A. WELCH,
ANDREW C. SCOTT,
R. J. LEHMAN,
C. B. GARNETT,
J. C. GIBSON,
Attorneys for Above-Named Appellees.

March 13, 1941.

THE GUTENBERG-MALDEN PRINTING COMPANY, 2130 WEST ADDISON, CHICAGO

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UNION PACIFIC RAILROAD COMPANY, ET AL.,
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Appellees.

MOTION TO POSTPONE ARGUMENT.

Come now the City of Kansas City, Missouri; The Atchison, Topeka and Santa Fe Railway Company; Chicago, Burlington & Quincy Railroad Company; Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of The Chicago, Rock Island & Pacific Railway Company; and Guy A. Thompson, Trustee of Missouri Pacific Railroad Company, a part of the appellees in the above-entitled cause; and move this Court to postpone oral argument in this case for thirty (30) days and to a date at least three (3) weeks subsequent to the time when the appellees shall be served with a complete brief by the appellants, and in support thereof say as follows:

I.

While argument is now set for April 2, 1941, less than three (3) weeks away, the appellees received the printed record only today, March 13, and have not yet been served with a complete copy of appellants' brief.

II.

Rule 27 (1-2) of this Court requires that the appellants shall file and serve, at least three (3) weeks before the case is called for hearing, a printed brief which, among other things, shall contain appropriate references to the printed record. Appellants tendered service on March 12, 1941, of an incomplete brief, consisting of printer's galley proof without the required citations to the printed record. The brief so tendered is 275 pages long, and examination indicates that much of it is addressed to an attack on the findings of fact made by the District Court. The appellees have accordingly refused to accept service of such incomplete brief and have requested that they be served with a complete brief as required by the rules.

III.

Some 20 of the 25 assignments of error which appellants have designated as points to be relied on are directed against findings of fact by the District Court. The factual situation in this case is exceedingly complex, with a printed record of 3929 pages after the oral testimony has been reduced from question and answer to narrative form and after many exhibits have been eliminated.

IV.

To cut short the period allowed by the rules for the preparation of appellees' brief through the means of the service of an incomplete brief, not complying with the rules, is a substantial impairment of the rights of counsel for appellees to a fair opportunity for preparing and filing a brief in answer, especially in view of the length of the record and of the opposing brief.

V.

In any event, and irrespective of the failure of the appellants to file a complete brief as required by the rules, the appellees need, under the special circumstances of this case, more than the two weeks' period contemplated by the rules for the preparation of a reply to the opposing brief. This need arises because of the fact that the printed record is only now available, because of the length of the record itself, the numerous assignments of error, and the fact that this case is here on a direct appeal from the District Court so that counsel are without the usual advantage of previously having briefed the case in the Circuit Court of Appeals.

Respectfully submitted,

WILLIAM E. KEMP,
HALE HOUTS,
LESLIE A. WELCH,
ANDREW C. SCOTT,
R. J. LEHMAN,
C. B. GARNETT,
J. C. GIBSON,
Attorneys for Above-Named Appellees.

March 13, 1941.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

J. C. GIBSON, being duly sworn, deposes and says that he is attorney for The Atchison, Topeka and Santa Fe Railway Company and his name is signed to the foregoing motion; that he has read the motion, knows the contents thereof, and that he knows them to be true.

J. C. GIBSON.

Subscribed and sworn to before me, a Notary Public in and for the County of Cook, State of Illinois, this 13th day of March, 1941.

CARL JUST.

My commission expires Sept. 15, 1943.

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